IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4035 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

T D BIJLANI SINCE DECEASED AND HIS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4035 of 1993

MR BP GUPTA for Petitioners No. 1-1/3

MR BY MANKAD, AGP for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. T.D.Bijlani - petitioner since deceased has filed this petition under Article 226/227 of the Constitution of India praying that this Court may quash and set aside the order dated 5th April, 1993, passed by Deputy Secretary, Narmada & Water Resources Department,

Gandhinagar. The Deputy Secretary by the said order has directed that the petitioner shall be reduced to the lowest pension permissible under the rules at Rs.375/- on permanent basis and also forfeit the entire amount of gratuity. The petitioner further prayed that this Court may direct the respondents that they may remit entire amount of gratuity and also to pay full pension to the petitioner in this behalf.

2. The facts giving rise to this petition are as under :-

2.1 The petitioner was appointed as Junior Engineer in Public Works Department in 1952. He was promoted as Deputy Engineer in 1956, as Executive Engineer in 1963 and as Superintending Engineer in 1972. He retired on 31.8.1985.

2.2 In the petition it was stated that a chargesheet dated 3.4.1980 was issued against the petitioner. Pursuant to the said chargesheet the authority suspended the service of petitioner from 28.7.1981. This chargesheet pertains to the irregularity committed by petitioner where he was serving at Ukai Circle during the period from 6.1.73 to 14.1.76 and 15.1.76 to 5.5.79. In the said chargesheet it was alleged that petitioner overstepped his financial powers in contravention of the provisions made in GRH and ID dated 5.6.64 as amended from time to time as well as paras 412 and 417 and Rule 8 of Appendix VIII of the PWD manual and made purchase of spares and stores worth Rs.298 Lacs from a few favoured firms and firms operating in fictitious names which shows gross negligence in performance of his official duties amounting to lack of integrity on his part. There were other charges also made against the petitioner.

2.3 However, it appears that, petitioner approached the Hon'ble Supreme Court of India and Hon'ble Supreme Court of India by its order dated 12th November, 1982, pleased to direct that petitioner shall be eligible to join service and will have full salary which he was drawing last time and office will take work from him on suspending the suspension order.

2.3(A) Thereafter the inquiry which was started in 1987 was completed in May 1990. After receipt of the said inquiry report, the Government passed the order dated 5.4.93 forfeiting the gratuity amount and reducing his pension to the lowest pension permissible under the rules at Rs.375/- from Rs.2025/-.

2.4 Being aggrieved and dissatisfied with the aforesaid order, the petitioner has filed present petition before this Court in this behalf.

3. Several contentions raised by petitioner in this behalf but one of the main contention which has been raised by petitioner is that the order dated 5th April, 1993, passed by the authority in which it has been stated that there were serious charges levelled against the petitioner, and the entire record of the case was not supplied to the petitioner. The petitioner did not contest the same and ultimately the Government passed the ex-parte order directing petitioner is entitled to Rs.375/- as minimum pension and amount of gratuity was forfeited. The authority has stated that the allegation regarding purchase of tubewell pipes were proved and they were serious charges proved against the petitioner in this behalf. It was stated that the order did not mention or whisper as to whether the authority has taken prior approval of the Gujarat Public Service Commission or not. It is a case of petitioner that, as per Rule 26 of the Gujarat Civil Services (Conduct) Rules, 1971 & Gujarat Civil Services (Discipline & Appeal) Rules, 1971 (hereinafter referred to as `the said Rules') provide that, copy of the advice by the Commission shall be furnished to Government servant alongwith the order passed in the case by authority making the order. He submitted that the copy of the advice by the GPSC was not sent to the petitioner and failure to supply copy of the advice of the GPSC has violated the provisions and hence order imposing penalty is void.

4. Mr.Gupta, learned counsel for the petitioner has relied upon Rule 26 of the said Rules, particularly Rule 26 which provides as under:

> "Rule 26. Supply of copy of Commission's advice:-
>
> Whereever the commission is consulted as provided in these rules, a copy of the advice by the commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned alongwith a copy of the order passed in the cases by the authority making the order."

4.1 Learned counsel for the petitioner further submitted that the petitioner was supplied with the copy of the inquiry report which was not legible and therefore the petitioner had written a letter to the authorities to supply legible copies of about 30 pages of the inquiry

report but the petitioner was supplied only some of the pages and as the legible copies of the inquiry was not available the petitioner could not give a reply to the inquiry report and the respondent authorities without affording opportunity passed an order on 5.4.1993 in this behalf.

4.2 Learned counsel further submitted that, in this case, inquiry was started in the year 1987 and was completed in the year 1990 and, therefore, there is unreasonable delay, and because of that delay, right of effective representation of the petitioner was violated. He has further submitted that the petitioner retired on 31.8.1985 and the chargesheet was given and enquiry was initiated in the year 1987 i.e. after two years after retirement of petitioner which is against the rules and regulations and guidelines pertaining to the enquiry.

4.3 Lastly, learned counsel for the petitioner submitted that the penalty of reducing the pension and forfeiting the amount of gratuity is disproportionate to the charges levelled against the petitioner, and therefore also, in any view of the matter, this Court may reduce the penalty from dismissal or removal from the service. In support of the same, he has relied upon the judgment of this Court in the case of M.R.Shaikh Vs. State of Gujarat reported in 1999(1) GLH (U.J.) 8 and also judgment of this Court in Special Civil Application No.4472 of 1987 decided on 23.2.2001 by this Court (Coram: M.S.Shah, J.) in the case of D.B.Brahmbhatt Vs. Development Commissioner.

5. On the other hand, Mr.B.Y.Mankad, learned AGP appeared on behalf of the State has submitted that, in this case very serious allegations of financial irregularities have been made against the petitioner and thereafter regular departmental inquiry held and the inquiry officer has also given very cogent and convincing reasons. The petitioner has acted contrary to the advice given by the authorities to him and, therefore, in any view of the matter, this Court may not exercise the discretionary jurisdiction under Article 227 of the Constitution of India in favour of the petitioner.

5.1 Learned counsel for the respondents has also submitted that in this case the Government has filed affidavit of A.S.Modi, Deputy Secretary, Narmada and Water Resources Department, dated 10th November, 1993. It has been stated in the affidavit that the petitioner was facing two departmental inquiries and petitioner was chargesheeted for irregularities committed by him as S.E.

Mechanical at Ukai Circle and Mechanical Circle (R&B) Ahmedabad during 6.1.73 to 5.5.79 vide G.M. Irrigation Department dated 3rd April, 1989. The petitioner was also chargesheeted for irregularities committed by him when he was working as Director, Ground Water Resources, Ahmedabad vide G.M.I.D. dated 22.3.83. It has been further stated that the inquiry report in respect of enquiry at Ukai Mechanical Circle was received from the Commissioner of Enquiries on 29.4.88 whereas in respect of inquiry of Ground Water Resources the report of inquiry was received on 8.2.89, taking both the reports in consideration, the Government has inflicted penalty on the petitioner vide Government Memo dated 5.4.93 in this behalf. In view of the said allegation as per Rule 9 and 10 of the said Rules, the authority decided to suspend the petitioner with immediate effect.

5.2 The Vigilance Commissioner also submitted in the report that the allegations were of serious nature and the independent authority vide its letter dated 2.9.82 had recommended to take action against the petitioner under Rule 9 and 10 of the said Rules. The Government has accepted the report of the Vigilance Commissioner and thereafter passed the impugned order in this behalf.

5.3 As regards consultation with the Public Service Commission, deponent of affidavit in para 12 submitted that where the cut in pension is to be made, there is no necessity of mentioning the consultation of the GPSC whereas in para 16 it has been stated that the decision regarding penalty has been taken at the level of Government after consultation with the GPSC which is just, proper and legal.

5.4 Mr.Mankad, learned AGP has also invited my attention to the communication dated 21st October, 1989, addressed by GPSC to Secretary, Irrigation Department, Sachivalaya, Gandhinagar. It was submitted that the Irrigation Department had addressed a letter dated 4.7.89 for approval of forfeiting the amount of gratuity and the pension amount. According to him, in view of the said letter and the averments made by the respondent in the affidavit, the authority has duly consulted with the GPSC in this behalf and there is no infirmity in the order of the authority. He submitted that in this case the authority has passed the order on 5.4.93 and in the affidavit it was specifically stated that the GPSC has been consulted, however, at the time of imposing punishment, the petitioner did not ask for the report of the Government and as per Rule 26 petitioner did not ask for advice of the Commission in this behalf.

5.5 Learned advocate for the respondents stated that as per Clause (d) of Rule 189-A of the Bombay Civil Services Rules, the Government ought to have consulted before final orders are passed. He submitted that the Government has consulted with the Commission before passing the final order. Thus provisions of Rule 189-A of BSCR is complied with.

5.6 Learned advocate for the respondents stated that when the aforesaid order was passed somewhere in 1993 i.e. during the period of departmental inquiry till passing of the order or even thereafter the petitioner has not demanded the copy of the advice given by the Commission in this behalf. It is only for the first time the petitioner has raised this grievance before this Court in Para 8 of the petition. Learned advocate for the respondents therefore submitted that in this case the advice was already given on 21.10.89 whereas order has been passed in 1993 and, therefore, the Government has already obtained prior advice of GPSC and therefore Rule 189-A has been complied with. In the absence of the demand made by the petitioner at the appropriate time the Government did not supply the copy of the advice to the petitioner and therefore non-supply of advice of the GPSC by the Government to the petitioner at relevant time is not fatal to the order of dismissal in this behalf.

5.7 It is no doubt true that Rule 26 provides that whereever the commission is consulted as provided in these rules a copy of the advice by the commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned alongwith a copy of the order passed in the cases by the authority making the order.

5.8 However, in the facts and circumstances of the case, the GPSC was already consulted in October 1989 and the order was passed in 1993 and the petitioner has asked the copy of the said consultation only for the first time in 1993. Before that the petitioner has not made any grievance before the authority in this behalf. The Government has already filed affidavit stating that the GPSC has already consulted and after consultation of the same, said order was passed. After the aforesaid order passed the petitioner has not made any grievance before the Government and in this case the petitioner has already expired and I have already passed the operative order giving the benefit.

6. I have considered the entire record of the case particularly memorandum dated 3rd April, 1980, order dated 5th April, 1993, chargesheet and report of the inquiry officers in this behalf. I have also considered Rule 189-A of the Bombay Civil Services Rules and also Rule 26 of the said Rules in this behalf. I have also gone through the affidavit filed by the Government in this behalf and also the judgment of this Court in the case of M.R.Shaikh Vs. State of Gujarat reported in 1999(1) GLH (UJ) 8 and also the judgment of this Court decided by my learned Brother M.S.Shah, J. in Special Civil Application No.4472 of 1987 decided on 23.2.2001. In my view, when there is serious charges of financial irregularities levelled against the petitioner and same were duly approved in the departmental inquiry and the fact that the authority has given ample opportunity of being heard to the petitioner, the Government has also consulted with the Commission as per Rule 189-A, therefore, I do no see any infirmity in the order passed by the authority in this behalf, and therefore, none of the contentions raised by the petitioner requires to be accepted in fact I accept the contention raised by the learned advocate for the respondents in this behalf. The petition is required to be dismissed with no order as to costs. Rule is discharged.

7. Mr.Gupta, learned advocate for the petitioner has stated that, in any view of the matter petitioner has expired on 21st July, 2001, and his heirs and legal representatives were brought on record, in view of this peculiar facts and circumstances of the case, when the original petitioner has been died, the Government may not further recovered any amount pursuant to the dismissal of the petitioner. However, from today onwards the Government will consider the order and for future the Government may not give any further benefits to the petitioner in this behalf.

(K.M. Mehta, J.)

syed/